IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5286 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHANUBEN NARANBHAI RABARI

Versus

OWNER OF TANKER GRW NO.2329 M/S NIRMA DETERGENT

Appearance:

1. First Appeal No. 5286 of 2001

MR SHITAL R PATEL for Petitioner No. 1

MR MB GANDHI for Respondent No. 1

MRS TRUSHA M GANDHI for Respondent No. 1

MS LILU K BHAYA for Respondent No. 2

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE C.K.BUCH

Date of decision: 04/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE C.K.BUCH)

1. Heard Mr. S.R.Patel, ld. counsel for the appellant-original claimant and Miss Lilu Bhaya,ld. counsel appearing for Respondent No.2 The New India Insurance Company Ltd.

2. When appeal was listed on Admission Board on 3.5.2002, after hearing the ld. counsel appearing for the appellant, notice was issued to the respondents for settlement in view of the submissions made on behalf of the appellant. Considering the contentions raised by the ld. counsel Mr. Patel for the appellant, appeal is ADMITTED. Mr. M.B.Gandhi, ld. counsel waives formal service of notice of admission for respondent no.1 and Ms. Lilu Bhaya, ld. counsel waives formal service of notice of admission for respondent no.2 Insurance Company. With the consent of ld. counsel appearing for the parties, appeal is taken up for final hearing today.

3. Appellant claimant,initially, has prayed for compenstion of Rs.2 Lacs for the injuries sustained in a motor vehicle accident occurred on 23.10.1992 at about 7.00 P.M. at village Vansol of District Mehsana. The appellant was given hit by a tanker bearing registration No. GRW 2329 and she had sustained injuries including fracture which ultimately resulted into permanent disability of leg at 36% and 18% disability for body as a whole.

4. In the present appeal, the appellant has prayed for enhancement of amount of compensation awarded to her under various heads by contending that the compensation awarded by the Tribunal is grossly inadequate. However, Mr.S.R.Patel, ld. counsel appearing for the appellant has restricted his arguments for enhancement of claim qua the amount awarded under the head of "future loss of income". He has pointed out that even as per the assessment of loss under this head i.e. "future loss of income", the Tribunal has erroneously calculated the amount. Tribunal has estimated the income of the appellant claimant at Rs.800/ per month. Permanent partial disablement suffered is also assessed at 18% for body as a whole which would suggest future loss of income at Rs.144/ per month and Rs.1768/ per annum and if multiplier of 15 years is applied, the total amount would come to Rs.25920/. Instead, the Tribunal has awarded Rs.18,000/ under the head of "future loss of income". He, therefore, submitted that the Tribunal should have awarded Rs.25,920/ under the head of "future loss of income" and hence the judgment and award under challenge requires to be modified accordingly by enhancing an amount of compensation of Rs.7920/ under the head of

"future loss of income".

5. Miss Bhaya, ld. counsel appearing for the respondent no.2 Insurance Company has fairly accepted that the liability to pay compensation is of respondent no.2 Insurance Company. According to her, Tribunal has committed mathematical error while calculating the amount under the head of "future loss of income" and the amount of compensation can be adequately enhanced to that extent. She has also tried to point out that for the amount of Rs.7920/ awarded less, the present appellant should have approached the Tribunal by filing Review Application. However, she has submitted that if the award is modified to this limited extent, respondent no.2 Insurance Company may not have any formal objection.

6. In view of the above submissions and in view of the fact that Tribunal has committed an error in calculating the amount under the head of "future loss of income" and the fact that ld. counsel appearing for the appellant has not pressed for enhancement of amount of compensation under any other heads and has restricted his prayer for enhancement of the amount of compensation to the tune of Rs.7920/, present appeal requires to be allowed accordingly by accepting the submissions of ld. counsel appearing for the appellant.

7. In the result, appeal is partly allowed. Judgment and award dated 18.4.2001 passed by M.A.C.Tribunal (Auxi), Mehsana in M.A.C.Petition No. 733/1993 is modified to the above extent and appellant is awarded additional amount of compensation of Rs.7,920/ with interest at the rate of 9% p.a. from the date of original claim petition with proportionate costs. Award accordingly. Appeal is accordingly allowed with costs.

4.10.2002 [D.K. TRIVEDI, J]

[C.K. BUCH, J]

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